

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3303**

OFFERED BY MR. RUSSELL of Oklahoma

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “First Responder Fair
3 Return for Employees on Their Initial Retirement Earned
4 Act of 2018” or the “First Responder Fair RETIRE
5 Act”.

6 SEC. 2. SENSE OF CONGRESS.

7 It is the sense of Congress that—

8 (1) it is in the best national and homeland se-
9 curity interests of the United States for Federal
10 agencies to retain the specialized knowledge and ex-
11 perience of individuals who suffer an injury or illness
12 while serving in a covered position (as defined under
13 the amendments made by this Act); and

14 (2) Federal agencies should ensure, to the
15 greatest extent possible, that an individual who can
16 no longer carry out the duties of a covered position,
17 and is reappointed to a position in the civil service
18 that is not a covered position, is reappointed within

1 the same Federal agency, in the same geographic lo-
2 cation, and at a level of pay commensurate to the
3 position which the individual held immediately prior
4 to such injury or illness.

5 **SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.**

6 (a) CSRS.—Section 8336(c) of title 5, United States
7 Code, is amended by adding at the end the following:

8 “(3)(A) In this paragraph—

9 “(i) the term ‘affected individual’ means an in-
10 dividual covered under this subchapter who—

11 “(I) is performing service in a covered po-
12 sition;

13 “(II) while on duty, becomes ill or is in-
14 jured as a direct result of the performance of
15 such duties before the date on which the indi-
16 vidual becomes entitled to an annuity under
17 paragraph (1) of this subsection or subsection
18 (e), (m), or (n), as applicable;

19 “(III) because of the illness or injury de-
20 scribed in subclause (II), is permanently unable
21 to render useful and efficient service in the em-
22 ployee’s covered position, as determined by the
23 agency in which the individual was serving
24 when such individual incurred the illness or in-
25 jury; and

1 “(IV) is appointed to a position in the civil
2 service that—

3 “(aa) is not a covered position; and

4 “(bb) is within an agency that regu-
5 larly appoints individuals to supervisory or
6 administrative positions related to the ac-
7 tivities of the former covered position of
8 the individual;

9 “(ii) the term ‘covered position’ means a posi-
10 tion as a law enforcement officer, customs and bor-
11 der protection officer, firefighter, air traffic con-
12 troller, nuclear materials courier, member of the
13 Capitol Police, or member of the Supreme Court Po-
14 lice; and

15 “(B) Unless an affected individual files an election
16 described in subparagraph (E), creditable service by the
17 affected individual in a position described in subparagraph
18 (A)(i)(IV) shall be treated as creditable service in a cov-
19 ered position for purposes of this chapter and determining
20 the amount to be deducted and withheld from the pay of
21 the affected individual under section 8334.

22 “(C) Subparagraph (B) shall only apply if the af-
23 fected employee transitions to a position described in sub-
24 paragraph (A)(i)(IV) without a break in service exceeding
25 3 days.

1 “(D) The service of an affected individual shall no
2 longer be eligible for treatment under subparagraph (B)
3 if such service occurs after the individual—

4 “(i) is transferred to a supervisory or adminis-
5 trative position related to the activities of the former
6 covered position of the individual; or

7 “(ii) meets the age and service requirements
8 that would subject the individual to mandatory sepa-
9 ration under section 8335 if such individual had re-
10 mained in the former covered position.

11 “(E) In accordance with procedures established by
12 the Director of the Office of Personnel Management, an
13 affected individual may file an election to have any cred-
14 itable service performed by the affected individual treated
15 in accordance with this chapter without regard to subpara-
16 graph (B).

17 “(F) Nothing in this paragraph shall be construed
18 to apply to such affected individual any other pay-related
19 laws or regulations applicable to a covered position.”.

20 (b) FERS.—

21 (1) IN GENERAL.—Section 8412(d) of title 5,
22 United States Code, is amended—

23 (A) by redesignating paragraphs (1) and

24 (2) as subparagraphs (A) and (B), respectively;

1 (B) by inserting “(1)” before “An em-
2 ployee”; and

3 (C) by adding at the end the following:

4 “(2)(A) In this paragraph—

5 “(i) the term ‘affected individual’ means an in-
6 dividual covered under this chapter who—

7 “(I) is performing service in a covered po-
8 sition;

9 “(II) while on duty, becomes ill or is in-
10 jured as a direct result of the performance of
11 such duties before the date on which the indi-
12 vidual becomes entitled to an annuity under
13 paragraph (1) of this subsection or subsection
14 (e), as applicable;

15 “(III) because of the illness or injury de-
16 scribed in subclause (II), is permanently unable
17 to render useful and efficient service in the em-
18 ployee’s covered position, as determined by the
19 agency in which the individual was serving
20 when such individual incurred the illness or in-
21 jury; and

22 “(IV) is appointed to a position in the civil
23 service that—

24 “(aa) is not a covered position; and

1 “(bb) is within an agency that regu-
2 larly appoints individuals to supervisory or
3 administrative positions related to the ac-
4 tivities of the former covered position of
5 the individual;

6 “(ii) the term ‘covered position’ means a posi-
7 tion as a law enforcement officer, customs and bor-
8 der protection officer, firefighter, air traffic con-
9 troller, nuclear materials courier, member of the
10 Capitol Police, or member of the Supreme Court Po-
11 lice.

12 “(B) Unless an affected individual files an election
13 described in subparagraph (E), creditable service by the
14 affected individual in a position described in subparagraph
15 (A)(i)(IV) shall be treated as creditable service in a cov-
16 ered position for purposes of this chapter and determining
17 the amount to be deducted and withheld from the pay of
18 the affected individual under section 8422.

19 “(C) Subparagraph (B) shall only apply if the af-
20 fected employee transitions to a position described in sub-
21 paragraph (A)(i)(IV) without a break in service exceeding
22 3 days.

23 “(D) The service of an affected individual shall no
24 longer be eligible for treatment under subparagraph (B)
25 if such service occurs after the individual—

1 “(i) is transferred to a supervisory or adminis-
2 trative position related to the activities of the former
3 covered position of the individual; or

4 “(ii) meets the age and service requirements
5 that would subject the individual to mandatory sepa-
6 ration under section 8425 if such individual had re-
7 mained in the former covered position.

8 “(E) In accordance with procedures established by
9 the Director of the Office of Personnel Management, an
10 affected individual may file an election to have any cred-
11 itable service performed by the affected individual treated
12 in accordance with this chapter without regard to subpara-
13 graph (B).

14 “(F) Nothing in this paragraph shall be construed
15 to apply to such affected individual any other pay-related
16 laws or regulations applicable to a covered position.”.

17 (2) TECHNICAL AND CONFORMING AMEND-
18 MENTS.—

19 (A) Chapter 84 of title 5, United States
20 Code, is amended—

21 (i) in section 8414(b)(3), by inserting
22 “(1)” after “subsection (d)”;

23 (ii) in section 8415—

24 (I) in subsection (e), in the mat-
25 ter preceding paragraph (1), by in-

1 serting “(1)” after “subsection (d)”;

2 and

3 (II) in subsection (h)(2)(A), by

4 striking “(d)(2)” and inserting

5 “(d)(1)(B)”;

6 (iii) in section 8421(a)(1), by insert-

7 ing “(1)” after “(d)”;

8 (iv) in section 8421a(b)(4)(B)(ii), by

9 inserting “(1)” after “section 8412(d)”;

10 (v) in section 8425, by inserting “(1)”

11 after “section 8412(d)” each place it ap-

12 pears; and

13 (vi) in section 8462(c)(3)(B)(ii), by

14 inserting “(1)” after “subsection (d)”.

15 (B) Title VIII of the Foreign Service Act

16 of 1980 (22 U.S.C. 4041 et seq.) is amended—

17 (i) in section 805(d)(5) (22 U.S.C.

18 4045(d)(5)), by inserting “(1)” after “or

19 8412(d)”; and

20 (ii) in section 812(a)(2)(B) (22

21 U.S.C. 4052(a)(2)(B)), by inserting “(1)”

22 after “or 8412(d)”.

23 (c) CIA EMPLOYEES.—Section 302 of the Central In-

24 telligence Agency Retirement Act (50 U.S.C. 2152) is

25 amended by adding at the end the following:

1 “(d) EMPLOYEES DISABLED ON DUTY.—

2 “(1) DEFINITIONS.—In this subsection—

3 “(A) the term ‘affected employee’ means
4 an employee of the Agency covered under sub-
5 chapter II of chapter 84 of title 5, United
6 States Code, who—

7 “(i) is performing service in a position
8 designated under subsection (a);

9 “(ii) while on duty in the position des-
10 ignated under subsection (a), becomes ill
11 or is injured as a direct result of the per-
12 formance of such duties before the date on
13 which the employee becomes entitled to an
14 annuity under section 233 of this Act or
15 section 8412(d)(1) of title 5, United States
16 Code;

17 “(iii) because of the illness or injury
18 described in clause (ii), is permanently un-
19 able to render useful and efficient service
20 in the employee’s covered position, as de-
21 termined by the Director; and

22 “(iv) is appointed to a position in the
23 civil service that is not a covered position
24 but is within the Agency; and

1 “(B) the term ‘covered position’ means a
2 position as—

3 “(i) a law enforcement officer de-
4 scribed in section 8331(20) or 8401(17) of
5 title 5, United States Code;

6 “(ii) a customs and border protection
7 officer described in section 8331(31) or
8 8401(36) of title 5, United States Code;

9 “(iii) a firefighter described in section
10 8331(21) or 8401(14) of title 5, United
11 States Code;

12 “(iv) an air traffic controller described
13 in section 8331(30) or 8401(35) of title 5,
14 United States Code;

15 “(v) a nuclear materials courier de-
16 scribed in section 8331(27) or 8401(33) of
17 title 5, United States Code;

18 “(vi) a member of the United States
19 Capitol Police;

20 “(vii) a member of the Supreme Court
21 Police;

22 “(viii) an affected employee; or

23 “(ix) a special agent described in sec-
24 tion 804(15) of the Foreign Service Act of
25 1980 (22 U.S.C. 4044(15)).

1 “(2) TREATMENT OF SERVICE AFTER DIS-
2 ABILITY.—Unless an affected employee files an elec-
3 tion described in paragraph (3), creditable service by
4 the affected employee in a position described in
5 paragraph (1)(A)(iv) shall be treated as creditable
6 service in a covered position for purposes of this Act
7 and chapter 84 of title 5, United States Code, in-
8 cluding eligibility for an annuity under section 233
9 of this Act or 8412(d)(1) of title 5, United States
10 Code, and determining the amount to be deducted
11 and withheld from the pay of the affected employee
12 under section 8422 of title 5, United States Code.

13 “(3) BREAK IN SERVICE.—Paragraph (2) shall
14 only apply if the affected employee transitions to a
15 position described in paragraph (1)(A)(iv) without a
16 break in service exceeding 3 days.

17 “(4) LIMITATION ON TREATMENT OF SERV-
18 ICE.—The service of an affected employee shall no
19 longer be eligible for treatment under paragraph (2)
20 if such service occurs after the employee is trans-
21 ferred to a supervisory or administrative position re-
22 lated to the activities of the former covered position
23 of the employee.

24 “(5) OPT OUT.—An affected employee may file
25 an election to have any creditable service performed

1 by the affected employee treated in accordance with
2 chapter 84 of title 5, United States Code, without
3 regard to paragraph (2).”.

4 (d) FOREIGN SERVICE RETIREMENT AND DIS-
5 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-
6 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by
7 adding at the end the following:

8 “(D)(i) In this subparagraph—

9 “(I) the term ‘affected special agent’ means an
10 individual covered under this subchapter who—

11 “(aa) is performing service as a special
12 agent;

13 “(bb) while on duty as a special agent, be-
14 comes ill or is injured as a direct result of the
15 performance of such duties before the date on
16 which the individual becomes entitled to an an-
17 nuity under section 811;

18 “(cc) because of the illness or injury de-
19 scribed in item (bb), is permanently unable to
20 render useful and efficient service in the em-
21 ployee’s covered position, as determined by the
22 Secretary; and

23 “(dd) is appointed to a position in the For-
24 eign Service that is not a covered position; and

1 “(II) the term ‘covered position’ means a posi-
2 tion as—

3 “(aa) a law enforcement officer described
4 in section 8331(20) or 8401(17) of title 5,
5 United States Code;

6 “(bb) a customs and border protection offi-
7 cer described in section 8331(31) or 8401(36)
8 of title 5, United States Code;

9 “(cc) a firefighter described in section
10 8331(21) or 8401(14) of title 5, United States
11 Code;

12 “(dd) an air traffic controller described in
13 section 8331(30) or 8401(35) of title 5, United
14 States Code;

15 “(ee) a nuclear materials courier described
16 in section 8331(27) or 8401(33) of title 5,
17 United States Code;

18 “(ff) a member of the United States Cap-
19 itol Police;

20 “(gg) a member of the Supreme Court Po-
21 lice;

22 “(hh) an employee of the Agency des-
23 ignated under section 302(a) of the Central In-
24 telligence Agency Retirement Act (50 U.S.C.
25 2152(a)); or

1 “(ii) a special agent.

2 “(ii) Unless an affected special agent files an election
3 described in clause (iv), creditable service by the affected
4 special agent in a position described in clause (i)(I)(dd)
5 shall be treated as creditable service as a special agent
6 for purposes of this subchapter, including determining the
7 amount to be deducted and withheld from the pay of the
8 individual under section 805.

9 “(iii) Clause (ii) shall only apply if the special agent
10 transitions to a position described in clause (i)(I)(dd)
11 without a break in service exceeding 3 days.

12 “(iv) The service of an affected employee shall no
13 longer be eligible for treatment under clause (ii) if such
14 service occurs after the employee is transferred to a super-
15 visory or administrative position related to the activities
16 of the former covered position of the employee.

17 “(v) In accordance with procedures established by the
18 Secretary, an affected special agent may file an election
19 to have any creditable service performed by the affected
20 special agent treated in accordance with this subchapter,
21 without regard to clause (ii).”.

22 (e) IMPLEMENTATION.—

23 (1) OFFICE OF PERSONNEL MANAGEMENT.—

24 Not later than 1 year after the date of enactment
25 of this Act, the Director of the Office of Personnel

1 Management shall promulgate regulations to carry
2 out the amendments made by subsections (a) and
3 (b).

4 (2) CIA EMPLOYEES.—The Director of the
5 Central Intelligence Agency shall promulgate regula-
6 tions to carry out the amendment made by sub-
7 section (c).

8 (3) FOREIGN SERVICE RETIREMENT AND DIS-
9 ABILITY SYSTEM.—The Secretary of State shall pro-
10 mulgate regulations to carry out the amendment
11 made by subsection (d).

12 (4) AGENCY CERTIFICATION.—The regulations
13 promulgated to carry out the amendments made by
14 this Act shall include a requirement that the head
15 of the agency at which an affected employee or spe-
16 cial agent (as the case may be) incurred the applica-
17 ble illness or injury certifies that such illness or in-
18 jury—

19 (A) was incurred in the course of the em-
20 ployee's or special agent's duties; and

21 (B) permanently precludes the employee or
22 special agent from rendering useful and effi-
23 cient service in the covered position but would
24 not preclude the employee or special agent from
25 continuing to serve in the Federal service.

1 (5) AGENCY REAPPOINTMENT.—The regula-
2 tions promulgated to carry out the amendments
3 made by this Act shall ensure that, to the greatest
4 extent possible, the head of each agency appoints af-
5 fected employees or special agents to supervisory or
6 administrative positions related to the activities of
7 the former covered position of the employee or spe-
8 cial agent.

9 (6) TREATMENT OF SERVICE.—The regulations
10 promulgated to carry out the amendments made by
11 this Act shall ensure that the creditable service of an
12 affected employee or special agent (as the case may
13 be) that is not in a covered position pursuant to an
14 election made under such amendments shall be
15 treated as the same type of service as the covered
16 position in which the employee or agent suffered the
17 qualifying illness or injury.

18 (f) EFFECTIVE DATE; APPLICABILITY.—The amend-
19 ments made by this Act—

20 (1) shall take effect on the date of enactment
21 of this Act; and

22 (2) shall apply to an individual who suffers an
23 illness or injury described in section
24 8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II)
25 of title 5, United States Code, as amended by this

1 section, section 302(d)(1)(A)(ii) of the Central Intel-
2 ligence Agency Retirement Act, as amended by this
3 section, or section 806(a)(6)(D)(i)(I)(bb) of the For-
4 eign Service Act of 1980, as amended by this sec-
5 tion, on or after the date that is 2 years after the
6 date of enactment of this Act.



